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V REISINGER

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	VP1300CR201001325
)	
Plaintiff,)	
)	
vs.)	RESPONSE TO STATE'S 2012 MOTION
)	IN LIMINE re: JAMES KNAPP
STEVEN DEMOCKER,)	
)	
Defendant.)	
)	(Hon. Gary Donahoe)
_____)	

Defendant Steven DeMocker, by and through Counsel undersigned, hereby
Responds to the state's February 13, 2012 "Motion in Limine re: James Knapp." This Response
is made pursuant to the Defendant's Right to Due Process of Law and the Right to a fair trial per
the 5th and 6th Amendments of the U.S. Constitution, § 2, Articles 3, 4 and 24 of the Arizona
Constitution, and the Arizona Rules of Criminal Procedure, and the Defendant's noticed Defense
of Third-Party Culpability.

This "new" 2012 Knapp Motion in Limine is essentially a re-tread of the state's two
previous motions in limine regarding Mr. Knapp. It is still not a valid motion. In addition, this
Court already heard arguments regarding Mr. Knapp and ruled in the Defendant's favor. The
endless requests by the state to re-hear previously ruled-upon issues is a waste of time and

resources on the eve of trial. Rule 16.1(d), Arizona Rules of Criminal Procedure, addresses how many trips to the well a party gets on pre-trial rulings:

Finality of Pretrial Determinations. Except for good cause, or as otherwise provided by these rules, *an issue previously determined by the court shall not be reconsidered.*

(Id.)

Since the last motions in limine by the state concerning Mr. Knapp, the 3rd party evidence has been thoroughly explored by the state through numerous interviews: members of the Prescott Police Department, Ann Saxerud (ex-wife of Knapp), Dr. Omri Berger, Terry Carmody, and Dr. Keen. *It is no secret to the state that Mr. Knapp was a con man.* It is not a debatable fact. The state's asserted:

Evidence in this case of Knapp's involvement in the two check schemes is intended to paint him as a crook or a thief.

(Stat's Motion in Limine, February 13, 2012, pg. 3).

Mr. Knapp used a wide variety of cons to get money, lodging, transportation, etc., out of friends and relatives. Knapp routinely lied about the extent of his cancer, in order to gain favors. Knapp told a business contact that as soon as Carol Kennedy (the victim in this case) was divorced that she was going to invest in a business franchise for him, and led this business contact to believe that he and Ms. Kennedy were boyfriend and girlfriend. Only, Ms. Kennedy never considered Mr. Knapp her boyfriend.

Contrary to the state's assertion, the evidence in this case of Knapp's involvement in the two check schemes will correctly to portray him as deceptive and manipulative, and desperate for money: in other words, a con man.

The previous Defense team said the following on the subject:

In essence, this latest attempt to keep Mr. Knapp out of this case is a motion aimed at whether enough evidence exists to allow Mr. DeMocker to point to Mr.

Knapp as a possible killer. Based upon a defense interview of the State's own cell tower expert just conducted on April 23, 2010, and the depositions of Mr. Knapp's former wife and his young son taken on April 21, a scenario has developed in which Mr. Knapp would have had an opportunity to kill Carol Kennedy and cover his tracks with the alibi evidence previously submitted. In short, a circumstantial case can be demonstrated, no weaker than that offered against Mr. DeMocker, that Knapp was the real killer who concocted an elaborate alibi to attempt to hide his guilt. That case is based upon a time-line that would allow Mr. Knapp to leave his son alone just long enough to go to Bridle path, kill Carol, check his voice mail on the way back, and return to his former wife's home just before she arrived.

(Response to State's Motion in Limine to Preclude Knapp Evidence, April 26, 2010, in P1300CR20081339, pg. 2).

Knapp lived a 200 or so feet from Ms. Kennedy, in her guesthouse. Knapp was conveniently *the first person on the scene* on the night of the murder, showing up shortly after the arrival of law enforcement. Knapp immediately pointed the finger at the Defendant. It was at those first moments in this case -- and no later -- that Knapp was "ruled out" as a suspect in the murder. Despite being a glaringly obvious "person of interest" in the murder of Carol Kennedy, no alibi was really needed for Knapp, because no serious investigation was ever done on Knapp. No serious interrogation was ever done on Knapp.

To the contrary. Knapp was the "tour guide" for law enforcement through Ms. Kennedy's house. Knapp had keys to the house. No law enforcement testing of Knapp's clothes, truck, washing machine, shoes, bike, or person was ever done. Knapp had a serious enough drug problem that he was not allowed to drive his children around nor have them spend the night with him, yet no serious questioning by the state about Knapp's drug use ever happened.

Why? Because no one but the Defendant was ever considered a suspect.

Then under really suspicious circumstances, Mr. Knapp was killed just six months after Ms. Kennedy. *The same medical examiner in this case* -- Dr. Keen -- arrived on the scene of Knapp's death 14 or so hours after the investigation into Knapp's death, and declared that it was a

suicide. The investigation of Knapp's death went so far as to intentionally *not test for gun shot residue* to determine whether Knapp actually shot himself. Only in this case would such a rush to judgment pass muster with law enforcement investigators and prosecutors.

In State v. Gibson, 202 Ariz. 321(2002), the Arizona Supreme Court found a low burden to present third party culpability:

The proper focus in determining relevancy is the effect the evidence has upon the defendant's culpability. To be relevant, the evidence need only tend to create a reasonable doubt as to the defendant's guilt.

Third party culpability in this case is vital to the Defense. The state's case against the Defendant is weak and circumstantial. The state cannot place the Defendant at the scene of the crime: no DNA, no blood, no fingerprints or other biological evidence, and no confession. Importantly, these facts will never change – no new evidence will surface that could place the Defendant at the scene of the crime – because he was not there and did not murder Carol Kennedy.

Knapp, however, can be placed at the scene of the crime -- by his fingerprint, which was on a document dated the same day as Ms. Kennedy's murder. That document was sitting on the kitchen counter near where Ms. Kennedy was preparing a salad on the night of her murder.

That Knapp is a viable candidate for third party culpability cannot be seriously in debate, which is why the state does not want the jury to hear evidence about Knapp's nefarious money dealings. There is *ample* evidence of Knapp's mental state, his addiction to prescription drugs, and his desperate search for money, his scams and failed relationships in the months leading up to Carol's death.

To put it more bluntly, Knapp was, and remains a much more solid suspect in the death of Carol Kennedy.

CONCLUSION

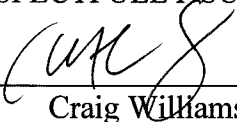
The previous Defense team said:

"Despite the State's repeated efforts to keep it out, Mr. Knapp and his role in this case should be presented to this jury. As the state often notes about Mr. DeMocker, Mr. Knapp is another person who had motive, opportunity and the means to kill Carol Kennedy. His behavior before and after the murder and his mysterious death six months later are all part of that story. His so-called 'iron-clad' alibi has holes in it even according to the state's own witnesses"


(Response to State's Motion in Limine to Preclude Knapp Evidence, April 26, 2010, in P1300CR20081339, pg. 3-4).

For the above stated reasons, all of the Knapp evidence must be allowed. The state's 2012 Knapp Motion should be denied.

RESPECTFULLY SUBMITTED this February 27, 2012.



Craig Williams
Attorney at Law

A copy of the foregoing delivered to:
Hon. Gary Donahoe, Division One,
Jeff Paupore, Steve Young, Yavapai County Attorney's Office
The Defendant
Greg Parzych, via e-mailed .pdf
by:  _____